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91-1651

Supreme Court, U.S.
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No.:

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

IRENE S. ATRAQCHI and MIKE R. ATRAQCHI,

PETITIONERS

v.

UNKNOWN NAMED AGENTS OF THE
FEDERAL BUREAU OF INVESTIGATION, ET AL.

RESPONDENTS

PETITION FOR A WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

## QUESTIONS PRESENTED

1. Whether the District Court abused its discretion by denying the petitioners, pro se, motion to vacate and set aside judgment for "any other reason" justifying relief from operation of judgment pursuant to Fed. R. Civ. P. Rule 60(b)(6) when such action is appropriate to accomplish justice.

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

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IRENE S. ATRAQCHI and MIKE R. ATRAQCHI

PETITIONERS

v.

UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION, VERN KLINGMAN, LEONARD DAHL, MUMTAZ FARGO, HAROLD HANSER, MIKE SCHAFER, FIRST UNITED METHODIST CHURCH, PRINCIPAL FINANCIAL GROUP, FIREMAN'S FUND INSURANCE CO., MOUNTAIN BELL TELEPHONE CO., JANE DOE, and JOHN DOE (1 thru 1000)

RESPONDENTS

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PETITION FOR WRIT OF CERTIORARI
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

TO: THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

The petitioners, Irene S. Atraqchi and Mike R. Atraqchi, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals For the Eighth Circuit entered on April 1, 1992.

## OPINION BELOW

On April 1, 1992, the United States Court of Appeals For the Eighth Circuit entered its memorandum affirming the District Court's judgment denying plaintiffs' amended motion to vacate judgment under Fed. R. Civ. P. 60(b)(6). The District Court in reviewing the plaintiffs' submissions found "no reason"

justifying the relief from the operation of the judgment, and thus, concluded that the plaintiffs have had their "day in court." A copy of the memorandum, which is to be published, is attached hereto as Appendix A, and a copy of the judgments of the District Court is attached hereto as Appendix B.

## JURISDICTION

On April 1, 1992, the United States Court of Appeals For the Eighth Circuit entered judgment affirming the District Court's decision in denying the petitioners' pro se amended motion to vacate judgment under Fed. R. Civ. P. 60(b)(6) without a hearing which constituted an abuse of discretion, thus they were denied their "day in

court."

B. Jurisdiction of this Court is invoked under Title 28, United States Code 1254 (1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment:

> No person shall be deprived of life, liberty, or property without due process of the law and equal protection of the laws.

Fed. R. Civ. P. Rule 60(b)(6):

> "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons.....(6) any other reason justifying relief from the operation of . the judgment."

## STATEMENT OF THE CASE

Jurisdiction of the District Court is invoked under 28 USCA 1343 (3) (4);

USCA Const. Amend 4; 28 USCS 1331; 42 USC 1983; and 42 USC 1985 (1) (2) (3) (4). The jurisdiction of the District Court is further invoked pursuant to 18 USCA 2520.

The petitioners are informed and believe, and alleged in their complaint that Unknown Named Agents of the Federal Bureau of Investigation in the City of Minneapolis, Minnesota illegally wiretapped all their telephone conversations and bugged their car and apartment without warrant, probable cause, or consent in violation of their Fourth Amendment right to the U.S. Constitution.

The seized conversations and the information gained were disseminated falsely, maliciously, and wantonly into a field of interception whereby

heard by the "General Public." The field of interception was instituted and financed by the First United Methodist Church for the purpose of converting the Atraqchis and the inquisition of their properties.

Through this field of interception, the petitioners have been located throughout the State of Minnesota, all of their conversations have been seized, and they were prevented from obtaining any employment for the last two years until the present.

The petitioners moved from the State of Montana to the State of Minnesota on February 18, 1990 after a death threat was made upon them by defendant, Fargo, in Billings, Montana if they did not consent to the

illegal wiretapping of their telephone and the electronical surveillance of their car and home and be converted.

The petitioners litigated a similar matter of illegal wiretapping in the Federal Court in the State of Montana, Billings Division. Their civil rights action, Cv-84-256-BLG, seeking declaratory judgment and injunctive relief against Unknown Named Agents of the Federal Bureau of Investigation was dismissed for failure to state a claim pursuant to Fed. R. Civ. P. Rule 12(b)(6) and was affirmed by the U.S. Court of Appeals for the Ninth Circuit, 791 F.2d 167 (1986), cert. denied, 107 S. Ct. 276 (1986).

Due to severe harassment petitioners seeked and were granted asylum in Sweden on February 27, 1987 only to

be forced back by the Unknown Named Agents of the Federal Bureau of Investigation.

In August, 1987 the petitioners moved to vacate judgment for newly discovered evidence, fraud, incarceration and murder of their witnesses on or about July, 1986 by Unknown Named F.B.I. Agents, Dahl, Fargo, and Klingman to prevent them from testifying about the rape of the petitioners' two daughters. The motion was denied as untimely and was affirmed by the Ninth Circuit, 878 F.2d 1438 (1989).

Petitioners were prevented from proceeding to the U.S. Supreme Court because of harassment, intimidation, and denial of counsel by the Government by means of illegal wiretapping

and electronical surveillance.

Respondents Unknown Named F.B.I. Agents, Dahl, Fargo, and Klingman instituted another field of interception in Baghdad, Iraq in additional to the one in the Minneapolis - St. Paul area and Billings, Montana by procuring about 2000 participants. Petitioners were made the center of activities for the purpose of gaining membership and for financial gain.

Petitioner, Mike R. Atraqchi, is a naturalized citizen from Iraq. He has resided in the United States since 1958.

Defendants Unknown Named Agents of the F.B.I. together with Fargo, Dahl, and Klingman have homosexualized, blackmailed, raped, and prostituted petitioners' two daughters and forced them

to say into the field of interception that the petitioner, their father, has incested them. Shortly, afterward, the petitioner lost his job with all Insurance Companies that he represented for the last eight years.

The petitioners have sustained grave injuries and are in imminent danger of sustaining more injuries due to the excessive illegal wiretapping and electronical surveillance:

They are alienated from their families, friends, and associates; deprived of job and living in their home; prevented from obtaining a job in Minnesota; deprived of operating property; in imminent danger of losing their home and their real estate properties for taxes; and they are under constant harassment and threat of entrapment.

Petitioners, pro se filed a civil action, Cv-3-90-225, in Minnesota immediately after the discovery of a new field of interception of illegal wiretapping and electronical surveillance in the U.S. District Court, Minnesota on April 18, 1990. The case was dismissed for failure to state a claim pursuant to Fed. R. Civ. P. Rule 12(b)(6) and was affirmed by the U.S. Court of Appeals for the Eight Circuit, 938 F.2d 189 (8th Cir. 1991) and cert. was denied on October 7, 1991, 112 S. Ct. 198.

Immediately, afterward the petitioners filed a motion pursuant to Fed. R. Civ. P. Rule 60(b)(6) for reversal which was denied on November 21, 1991. The petitioners then filed an Amended Motion to Vacate the Judgment which was denied on November 29, 1991, and judg-

ment was affirmed by the U.S. Court of Appeals For the Eighth Circuit on April 1, 1992.

## REASONS FOR GRANTING THE WRIT

THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING THE PETITIONERS, PRO SE, MOTION TO VACATE AND SET ASIDE JUDGMENT FOR "ANY OTHER REASON" JUSTIFYING RELIEF FROM OPERATION OF JUDGMENT PURSUANT TO FED. R. CIV. P. RULE 60(b)(6) WHEN SUCH ACTION IS APPROPRIATE TO ACCOMPLISH JUSTICE.

Certiorari should be granted for two reasons: This petition presents an issue resolved by implication by this Court but not specifically and unequivocally decided by this Court; and the Opinion below conflicts, by implication with previous decisions of this Court and with the decisions of other Circuits.

This Court has implicitly held in Klapprott v. United States, 335 U.S. 601, 614-15 (1949), that Fed. R. Civ. P. Rule 60(b)(6) permits a court to grant relief "from a final judgment, order, or proceeding for . . . any other reason justifying relief from the operation of the judgment." The " 'other reason' clause . . . vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice."

The petitioners argue that on September 19, 1990 that the District Court dismissed their civil rights suit without affording them the opportunity to be heard, thus they were denied their "day in court."

Moreover, the petitioners Irene and Mike Atraqchi, pro se, under duress, not

schooled in law, were not represented by a competent legal counsel at that hearing not by choice, but were deprived of counsel by the Government's continuous illegal wiretapping and electronical surveillance since 1958 until the present.

At that hearing the District Court allowed the petitioners only fifteen minutes time to state relevant issues of material facts supported by concrete evidence to uphold their notice pleading complaint while being constantly questioned by the Bench which prevented the petitioners from presenting all the facts pertaining to their case.

The fifteen minutes allowable time by the Court while continuously being questioned by the Bench was hardly enough time to constitute a fair hearing to de-

fend, enforce, and protect their rights which have been violated even at minimal standards of due process. Irvin v. Dowd, 366 U.S. 717 (1961).

Therefore, it is a violation of due process for a judgment to be binding on a litigant who has never had an opportunity to be heard. Galpin v. Page, 85 U.S. 350 (1873).

Since there have been no denial of the allegations set forth in the complaint, they must be accepted as true. Accordingly, relief from judgment therefore rests in the sound discretion of the court and should ordinarily incline towards granting the relief. This is true if no rights have attached in reliance upon the judgment and no actual injustice will occur. Federal Practice

and Procedure, Barron and Holtzoff, Vol. 3, Section 1323.

In petitioners' case the suit was dismissed pursuant to Fed. R. Civ. P. Rule 12(b)(6) for failure to state a claim, and no intervening rights have been established so as to be prejudicially affected by any action that this Court may deem necessary to take. While the Court may not act capriciously, it may use its discretion in averting an injustice when such circumstances are warranted. Wolfsohn v. Raab, 11 F.R.D. 254 (E.D. Pa. 1951); Seven Elves, Inc. v. Eskenazi, 635 F.2d 396, 401 (5th Cir. 1981); United States v. Mc Donald, 86 F.R.D. 204 (N.D. Ill. 1980)

It has been held in the most recent cases that Fed. R. Civ. P. Rule 60(b)(6) should be liberally applied so that any

case presenting the question of substantial rights should be resolved in favor of the petition to set aside a judgment where a litigant has not been afforded an opportunity to have his case decided on the merits. Tozer v. Charles A. Krause Milling Company, 189 F.2d 242 (3rd Cir. 1951)

According to this principle, the Atraqchis are entitled to a fair hearing and an opportunity to present all the facts available in support of their position.

Moreover, most of the decisions interpreting Rule 60 have been concerned with cases involving default judgments. However, there is little difference between a judgment rendered without a hearing and one rendered after a hearing in which the petitioners, pro se, were not

afforded the opportunity to present their case. The petitioners' condition at the time of the hearing was such that they had been denied competent legal counsel to advise them, under duress, without a job for six years, sleeping in their car on the highway, deprived of their home, families, and friends and fully occupied in efforts to protect themselves against criminal entrapment due to illegal wiretapping and electronical surveillance by the Government; and they were in such a mental condition as not to have the ability to properly represent their interests. Clarke v. Burkle, 570 F.2d 824 (8th Cir. 1978).

The power vested in the courts pursuant to Rule 60(b)(6) is sufficient to enable them to vacate judgments when-

ever such action is appropriate to accomplish justice. Klapprott v. U.S., supra,; In Re Cremidas' Estate, 14 F.R.D. 15 (D.C. Alaska 1953).

Rule 60(b)(6) requires that a motion must be submitted within reasonable time. Reasonable time depends upon the facts in each individual case. For example, the Court granted relief after the lapse of a period of four years in Klapprott v. U.S., supra. According to the facts of that case, the petitioner was confined in prison during the period in question. While the facts in the Atraqchis' case are slightly different, one could conclude that the Atraqchis are severely restricted by the virtue of the illegal wiretapping and electronical surveillance that is imposed unjustly upon them as though they were actually

physically confined.

Petitioners have alleged that they were denied competent legal counsel to advise them. They contacted many attorneys, and they were assessed money in certain instances but were refused assistance the next day for fear of retaliation by the Unknown Named F.B.I. Agents. The petitioners continuously motioned the Courts during the pendency of their action for a Court appointed attorney to assist them but to be paid by the Atraqchis. Their motions for appointment of attorney were denied.

## CONCLUSION

To hold the petitioners not entitled to relief pursuant to Fed. R. Civ. P. Rule 60(b)(6) is to impose extreme rigid interpretation of the rule than

that intended.

All that petitioners are requesting is an opportunity, assisted by competent legal counsel to present their case.

Therefore, petitioners, pro se, respectfully, pray to this honorable Court that the petition for writ of certiorari be granted, and the judgment of the District Court be reversed.

Dated: 4/13/92

Irene S. Atraqchi

Irene S. Atraqchi, Pro se

Mike R. Atraqchi, Pro se

UNITED STATES COURT OF APPEALS
FOR THE FIGHTH CIRCUIT

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No. 92-1006

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| | | |
|---|---|---|
| Irene S. Atraqchi; Mike Atraqchi,<br><br>Appellants,<br><br>v.<br><br>Federal Bureau of Investigation, Unknown Agents of The, individually and as agents of the Federal Bureau of Investigation; Vern Klingman; Leonard Dahl; Mumtaz Fargo; Mike Schafer; Harold Hanser; First United Methodist Church; Principal Financial Group; Fireman's Fund Insurance Company of Wisconsin, Inc.; Mountain Bell Telephone Company; Jane Doe; John Doe 1 thru 1000,<br><br>Appellees. | * | Appeal From the United States District Court for the District of Minnesota<br><br>(TO BE PUBLISHED) |

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Submitted: January 2, 1992

Filed: April 1, 1992

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Before McMILLIAN, FAGG, and MAGILL, Circuit Judges.

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PER CURIAM.

Irene and Mike Atraqchi appeal pro se from the order of the District Court[1] for the District of Minnesota denying their amended motion to vacate judgment under Fed. R. Civ. P. 60(b)(6). For reversal, the Atraqchis argue that in September 1990 the district court erroneously dismissed their civil rights lawsuit without affording them a hearing, and that they asserted sufficient reasons in their Rule 60(b)(6) motion to warrant relief. We affirm.

Rule 60(b)(6) permits a court to grant relief "from a final judgment, order, or proceeding for . . . any

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[1]The Honorable Robert G. Renner, Senior United States District Judge for the District of Minnesota.

other reason justifying relief from the operation of the judgment." The "'other reason' clause . . . vests power in courts adequate to enable them to vacate judgments whenever such action is appropriate to accomplish justice." Klapprott v. United States, 335 U.S. 601, 614-15 (1949).

After carefully reviewing the record, we conclude that the district court did not abuse its discretion in denying the amended Rule 60(b)(6) motion for failure to set forth a proper ground for relief. The Atraqchis' claims did not present an "unusual situation" warranting relief under Rule 60(b)(6). See Fuller v. Quire, 916 F.2d 358,

361 (6th Cir. 1990). To the extent that the Atraqchis assert claims on appeal that they did not raise in their amended Rule 60(b)(6) motion, we note that "(t)his Court has maintained consistently that "Rule 60(b) was not intended as a substitute for a direct appeal from an erroneous judgment.'" Spinar v. South Dakota Bd. of Regents, 796 F.2d 1060, 1062 (8th Cir. 1986) (quoting Hartman v. Lauchli, 304 F.2d 431, 432 (8th Cir. 1962)).

Accordingly, the district court judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Irene S. Atraqchi and
Mike R. Atraqchi,

Plaintiffs,

vs.

ORDER
Cv. No. 3-
90-225

Unknown named agents of
the Federal Bureau of
Investigation, et. al.,

Defendants.

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Before the Court is the motion of plaintiffs to vacate and set aside the judgment made and entered in the above entitled matter on September 19, 1990.

This motion is brought pursuant to Rule 60(b)(6) of the Federal Rules of Civil Procedure, which enables a court to relieve a party from a final judgment from any reason justifying relief from the operation of the

judgment. The Court has reviewed the submissions of the plaintiffs and finds that there is no reason justifying relief from the operation of the judgment.

The Court having considered said Motion, arguments of plaintiffs, and all of the files, records, and proceedings herein, it is hereby ORDERED that the Motion is DENIED.

Dated: November 21, 1991.

ROBERT G. RENNER
United States
District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Irene S. Atraqchi and
Mike R. Atraqchi

Plaintiffs, ORDER
Cv. No. 3-
vs. 90-225

Unknown named aqents of
the Federal Bureau of
Investigation, et. al.,

Defendants.

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Before the Court is the motion of plaintiffs for a new trial and amendment of findings and the amended motion to vacate judgment. These motions are brought pursuant to Rule 59(a) and Rule 60(b)(6) of the Federal Rules of Civil Procedure.

Plaintiffs attempt to use these motions to seek reconsideration of the Order of November 21, 1991, which denied their motion to vacate and set

aside the judgment made and entered in the above entitled matter on September 19, 1990.

A motion for a new trial must be served not later than 10 days after the entry of judgment. Fed. R. Civ. P. 59(b). Judgement was entered in this case more than a year ago. The motion for a new trial must be denied as untimely.

As for the amended motion to vacate judgment, the Court does not hesitate to reaffirm its previous decisions in this case. The plaintiffs have had their day in court. There is absolutely no chance that the Court will reverse its earlier dismissal of their complaint. Any further mo-

tions from the plaintiffs would be utterly futile.

The Court having considered said motions, arguments of plaintiffs, and all of the files, records, and proceedings herein, it is hereby ORDERED that the motions of the plaintiffs are DENIED.

Dated: November 29, 1991.

ROBERT G. RENNER
United States
District Judge